

#8/Brief
Appeal



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE APPLICATION OF:

METHOD AND MEANS FOR
EVALUATING CUSTOMER
SERVICE PERFORMANCE

Appeal No.

SERIAL NO:

09/255,968

**APPLICANT'S BRIEF
FOR APPEAL**

FILED:

FEBRUARY 23, 1999

FOR:

VISION INSIGHT LLC

Group Art Unit:

3623

Examiner:

JAMES A. REAGAN

Attorney Docket No:

P03735US0

Assistant Commissioner of Patents
Washington, D. C. 20231

Dear Sirs:

Please enter the following Brief on Appeal into the record.

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CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this **APPLICANT'S BRIEF FOR APPEAL FOR PATENT APPLICATION SERIAL NO. 09/255,968** for **NANCY L. ANDERSON and LOIS J. PANNKUK** and documents referred to as enclosed therein are being deposited with the U. S. Postal Service in an envelope as "Express Mail Post Office to Addressee" addressed to: Assistant Commissioner of Patents, Box Appeal, Washington, D.C. 20231, prior to 5:00 p.m. on 16 day of September, 2002.

09/18/2002 AMONDAF1 00000156 09255968

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Kirk M. Hartung
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Express Mail Label #EV 166984872 US

1. REAL PARTY IN INTEREST

The applicant, Performax, Inc. is the only real party in interest.

2. RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences pending that relate to this appeal.

3. STATUS OF CLAIMS

Claims 1-4, 6-11 and 23-31 are pending and appealed. Claims 5 and 12-22 have been cancelled.

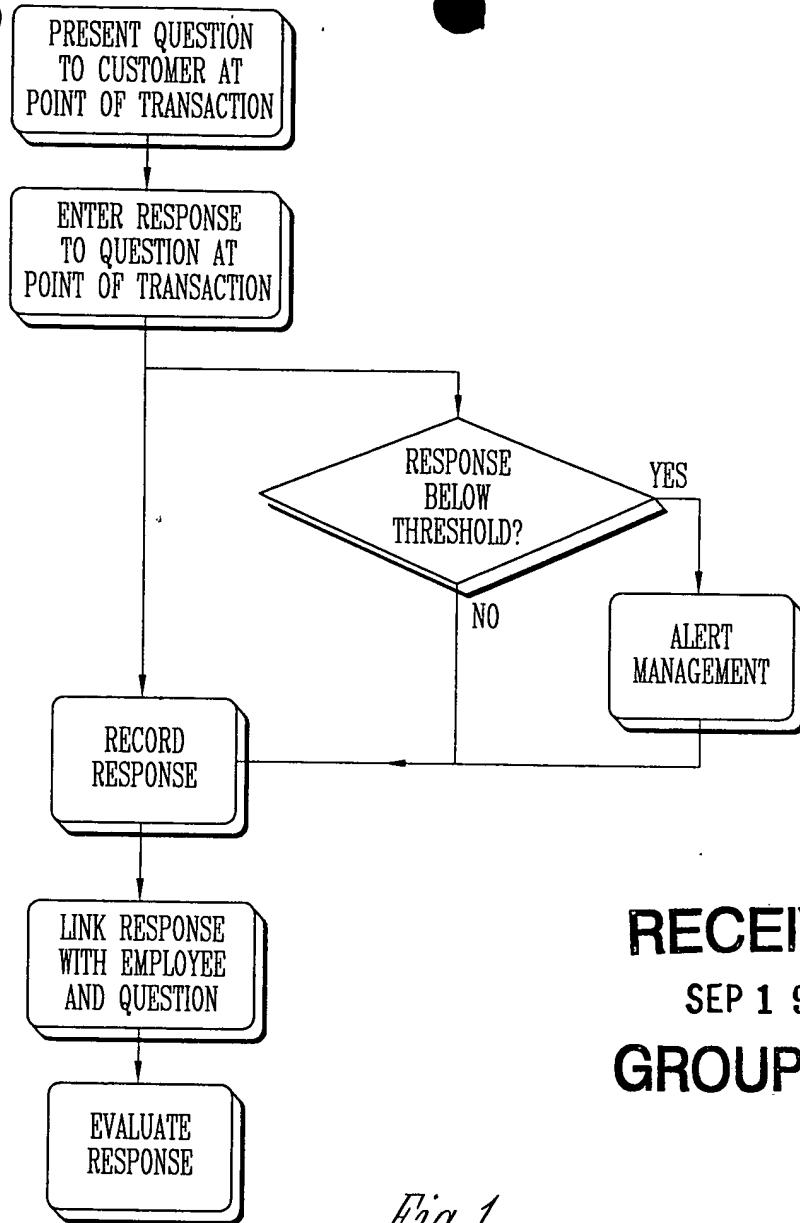
4. STATUS OF AMENDMENTS

Applicant's Amendment After Final dated June 27, 2002 has been entered, as stated in the Examiner's Advisory Action dated July 15, 2002.

5. SUMMARY OF THE INVENTION

The present invention is directed towards a method for evaluating customer service performance wherein a customer is asked questions at the point of transaction or sale. The responses are recorded and linked to the employee who served the customer. The responses can be used for employee evaluation. (Specification, page 3, lines 8-28.)

Figure 1 illustrates a flow chart of the preferred method for evaluating customer service performance according to the present invention.



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Fig. 1

The first step of the process involves presenting one or more questions to the customer at the point of transaction. The questions may be presented on an electronic display screen or on a customer's register receipt. (Specification, page 6, lines 9-22.) The customer's responses are then entered at the transaction point and recorded electronically or in hard copy. (Specification, page 7, lines 8-19.) The employee's identification who served the customer is linked with each transaction and survey response. (Specification, page 7, lines 20-25.) The scores from the survey questions can be accumulated and used by management to evaluate employee performance. (Specification, page 8, line 17-page 9, line 6.)

6. ISSUES

A. Are independent claims 1, 23, and 31 obvious under 35 U.S.C. § 103(a) over Matyas 6,102,287 in view of Cadotte 4,345,315?

B. Does Matyas 6,102,287 disclose, teach or otherwise suggest the presentation of questions to a customer at the point of sale and obtaining responses of questions at the point of transaction?

7. GROUPING OF THE CLAIMS

All the claims can be grouped together including independent claim 1 with depending claims 2-4 and 6-11, independent claim 23 with depending claims 24-30, and independent claim 31.

8. ARGUMENT

A. The Examiner Incorrectly Interprets Matyas.

The rejection of the claims should be reversed because the Examiner misinterprets the primary reference, Matyas. While the Examiner agrees with Applicant that Matyas relates to shopping and purchasing of goods and services over the Internet, the Examiner further asserts that Matyas discloses the presentation of questions to a customer at the point of sale and obtaining responses to the questions at the point of the transaction, citing column 2, lines 42-47 of Matyas. (See Advisory Action ¶ 8.) Thus, the Examiner concludes that while Matyas “is generally directed towards Internet shopping, Matyas clearly anticipates applications at the POS [point of sale] terminal in the store.”

Applicant respectfully submits that the Examiner's interpretation of Matyas is incorrect with regard to any disclosure regarding point of sale or point of transaction questions and answers.

The Examiner's reliance upon column 2, lines 42-47 of Matyas does not support the Examiner's conclusion that Matyas discloses questions and answers at the point of sale. This citation of Matyas is contained in the Summary of the Invention, and states in full

“Another object of the present invention is to provide an electronic payment system that allows buyers to take surveys for products they have purchased.”

“Another object of the present invention is to provide a means within an electronic payment system to conveniently input survey results using a client browser.”

As explained in the Abstract of the Matyas patent, Matyas discloses an electronic payment system where a buyer purchases a product by sending an electronic payment order to a seller and an evaluator collects product survey information from buyers that have previously purchased products from the seller and provides product survey information to prospective buyers upon request. This allows potential buyers to review survey results and thereby make a more informed decision about buying a product.

Thus, the Matyas patent relates to

“a method and apparatus for providing product survey information in an electronic payment system . . . so that buyers can receive product evaluation information prior to making purchases and so that buyers can participate in on-line surveys, in order that they may provide comments about purchased products.” (Col. 2, lines 63-col. 3, line 2).

Matyas further explains at col. 3, lines 6-9,

“An additional entity, an evaluator, collects product survey information from buyers that have previously purchased products from the seller and

provides product survey information to prospective buyers upon request.”
(emphasis added).

Matyas also explains at col. 3, lines 29-30 that, “The buyer later provides survey information to the evaluator. *(emphasis added).*

As described in the Matyas Field of Invention, Matyas generally relates to shopping and purchasing of goods and services over the Internet. Electronic payment protocols are utilized for implementing credit card based transactions.

At col. 3, lines 50-51, Matyas states that “Survey responses come from buyers who actually purchased the products in question,” thus inferring that the purchase was made in the past.

Thus, it is impossible for the purchaser to evaluate the product or services, until the product and services are received. Since this is an Internet transaction, the product or service is not obtained at the time of the purchase, but necessarily comes after the point of sale when the product is shipped or the services performed. The purchaser cannot complete a survey about the product or service at the time it is purchased, but can only complete the survey at a later time.

Matyas further explains at col. 26, lines 1-33 that the survey evaluator must verify that the respondent did in fact purchase the product being evaluated. Such a need to verify purchase of the product arises because the survey cannot be completed at the time of the purchase, since the purchaser does not have the product in hand. Claim 1 of Matyas similarly requires a determination of whether the entity in fact purchased the product from the seller.

Accordingly, contrary to the Examiner’s assertion, Matyas does not relate to a point of purchase survey. There is no teaching or suggestion in Matyas of a face to face point of sale transaction. The only disclosure in Matyas relates to Internet transactions. The summary cited

*not in
claim*

by the Examiner does not discuss point of sale questions and answers, but rather is merely a summary of objectives for the Matyas Internet transaction.

Since the Examiner's interpretation of Matyas is incorrect, the rejection of the claims based on Matyas must be reversed.

The Examiner cites Cadotte as relating to complaints about employee knowledge and service, and concludes that it would be obvious to use the electronic payment device of Matyas to collect survey information about employees as well as products and services. However, since Matyas is an Internet shopping tool, there is no employee to evaluate. Thus, there is no motivation for combining the teachings of Cadotte with Matyas, as required for an obviousness rejection under § 103.

B. Independent Claims 1, 23 and 31 Are Not Obvious.

Independent method claim 1 is directed towards an evaluation of customer service performance of a specific employee "at a point of transaction and at a time of transaction." The survey question is presented to the customer "at the point of transaction and the time of transaction," as required by claim 1. The response to the survey question is also obtained at the point of transaction, as provided by claim 1. Thus, the method of customer service performance evaluation according to claim 1 all takes place at the point and time of the transaction. This is not disclosed by Matyas.

Matyas expressly states that the survey information is collected from buyers who previously purchased that product (col. 3, lines 6-9), and that the buyer later provides the survey information to the evaluator (col. 3, lines 29-30). Thus, the Matyas survey does not take place at the point and time of the transaction, as required by claim 1.

Independent claim 23 is similar to claim 1, in being directed towards a method of evaluating customer service performance at a point of transaction and at a time of transaction, with the question being presented to the customer at the point and time of transaction, and the response being obtained at the point and time of transaction. Again, evaluation at the point and time of transaction is not taught by Matyas.

Independent claim 31 is directed towards a system of collecting customer feedback of an employee's performance at a point of transaction and at the time of transaction. The system of claim 31 requires that an electronic payment device which presents a question to the customer about the employee's performance and obtains a response to the question from the customer at the time and point of the transaction. As discussed above, Matyas does not involve an employee survey, and the survey is not completed at the time and point of the transaction. As further discussed above, there is no motivation to combine Cadotte with Matyas.

Accordingly, independent claims 1, 23 and 31 distinguish over the cited references so as to be allowable. Claims 2-4 and 6-11 depend from claim 1 and should be allowable as depending from an allowable base claim. Claims 24-30 depend from claim 23 and should be allowable as depending from an allowable base claim.

10. APPENDIX - PENDING CLAIMS

1. A method of evaluating customer service performance of a specific employee at a point of transaction and at a time of transaction, comprising:
presenting a question to a customer at the point of transaction and the time of transaction about the employee's performance using an electronic payment device;
obtaining a response to the question from the customer at the point of transaction using the electronic payment device;
recording the customer's response;
evaluating the response.
2. The method of evaluating customer service performance according to claim 1, further comprising linking the question and response with the employee who served the customer.
3. The method of evaluating customer service performance according to claim 1 wherein the question is presented to the customer on a display of the electronic payment device.
4. The method of evaluating customer service performance according to claim 1 wherein the question is presented on a monitor of the electronic payment device and the response is entered on a keyboard of the electronic payment device.
6. The method of evaluating customer service performance according to claim 1 wherein the question that is presented to the customer is randomly picked from a group of questions.
7. The method of evaluating customer service performance according to claim 1, further comprising accumulating scores for questions for individual employees over a defined time period.

8. The method of evaluating customer service performance according to claim 1, further comprising accumulating scores for questions for different measurement levels over a defined time period.
9. The method of evaluating customer service performance according to claim 1 wherein the response is compiled in a computer.
10. The method of evaluating customer service performance according to claim 1, further comprising communicating an alert signal when the customer service response falls below a threshold.
11. The method of evaluating customer service performance according to claim 1, further comprising offering the customer a reward as an incentive to answer the question.
23. A method of evaluating customer service performance of an employee at a point of transaction and at a time of transaction, comprising:
presenting a question to a customer at the point of transaction and at the time of transaction about the employee's performance using an electronic payment device;
obtaining a response to the question from the customer at the point of transaction and the time of transaction using the electronic payment device; and
evaluating the response at the point of transaction and the time of transaction.
24. The method of claim 23 further comprising communicating an alert signal at the time of transaction based on the response. .

25. The method of claim 23 further comprising offering the customer a reward as an incentive to provide the response to the question.

26. The method of claim 23 further comprising selecting the question to present from a group of questions using the electronic payment device.

27. The method of claim 23 wherein the point of transaction is a store, the customer and the employee being physically present at the store at the time of transaction.

28. The method of claim 23 wherein the step of evaluating the response is scoring the response.

29. The method of claim 23 further comprising storing the response.

30. The method of claim 23 further comprising tying the employee's compensation to the response.

31. A system for collecting customer feedback of an employee's performance at a point of transaction and at a time of transaction, comprising:
an electronic payment device adapted to present a question to the customer about the employee's performance and adapted to obtain a response to the question from the customer at the time of transaction and at the point of transaction;
a memory in operative connection with the electronic payment device for storing the response;
and

a control program adapted to link the employee and the response and adapted to cumulatively evaluate the employee's performance.

Respectfully submitted,



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FEE TRANSMITTAL for FY 2002

Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 160.00)

Complete if Known	
Application Number	09/255,968
Filing Date	February 23, 1999
First Named Inventor	ANDERSON, NANCY L., et al.
Examiner Name	James A. Reagan
Group Art Unit	3623
Attorney Docket No.	P03735US0

METHOD OF PAYMENT (check all that apply)

Check Credit card Money Order Other None

Deposit Account:

Deposit Account Number
Deposit Account Name

26-0084

McKee, Voorhees & Sease, P.L.C.

The Commissioner is authorized to: (check all that apply)

Charge fee(s) indicated below Credit any overpayments
 Charge any additional fee(s) during the pendency of this application
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)		
101 740	201 370	Utility filing fee	
106 330	206 165	Design filing fee	
107 510	207 255	Plant filing fee	
108 740	208 370	Reissue filing fee	
114 160	214 80	Provisional filing fee	
SUBTOTAL (1) (\$)		0	

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims	Fee from below	Fee Paid
Total Claims		-20** =	
Independent Claims		X	=
Multiple Dependent		- 3** =	

Large Entity	Small Entity	Fee Description
Fee Code (\$)	Fee Code (\$)	
103 18	203 9	Claims in excess of 20
102 84	202 42	Independent claims in excess of 3
104 280	204 140	Multiple dependent claim, if not paid
109 84	209 42	** Reissue independent claims over original patent
110 18	210 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$)		0

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
105 130	205 65	Surcharge - late filing fee or oath	
127 50	227 25	Surcharge - late provisional filing fee or cover sheet	
139 130	139 130	Non-English specification	
147 2,520	147 2,520	For filing a request for ex parte reexamination	
112 920*	112 920*	Requesting publication of SIR prior to Examiner action	
113 1,840*	113 1,840*	Requesting publication of SIR after Examiner action	
115 110	215 55	Extension for reply within first month	
116 400	216 200	Extension for reply within second month	
117 920	217 460	Extension for reply within third month	
118 1,440	218 720	Extension for reply within fourth month	
128 1,960	228 980	Extension for reply within fifth month	
119 320	219 160	Notice of Appeal	
120 320	220 160	Filing a brief in support of an appeal	160.00
121 280	221 140	Request for oral hearing	
138 1,510	138 1,510	Petition to institute a public use proceeding	
140 110	240 55	Petition to revive - unavoidable	
141 1,280	241 640	Petition to revive - unintentional	
142 1,280	242 640	Utility issue fee (or reissue)	
143 460	243 230	Design issue fee	
144 620	244 310	Plant issue fee	
122 130	122 130	Petitions to the Commissioner	
123 50	123 50	Processing fee under 37 CFR 1.17(q)	
126 180	126 180	Submission of Information Disclosure Stmt	
581 40	581 40	Recording each patent assignment per property (times number of properties)	
146 740	246 370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149 740	249 370	For each additional invention to be examined (37 CFR § 1.129(b))	
179 740	279 370	Request for Continued Examination (RCE)	
169 900	169 900	Request for expedited examination of a design application	
Other fee (specify)			
*Reduced by Basic Filing Fee Paid		SUBTOTAL (3) (\$)	160.00

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Signature	<i>Kirk M. Hartung</i>			Date	7/16/02

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